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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/513,888	02/25/2000	Carlo M. Croce	9855-30UI	6972

570 7590 09/26/2002

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2005 MARKET STREET  
PHILADELPHIA, PA 19103

EXAMINER

LOEB, BRONWEN

ART UNIT	PAPER NUMBER
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1636

25

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/513,888

Applicant(s)

CROCE ET AL.

Examiner

Bronwen M. Loeb

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 16 September 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 23 and 24.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 100-144.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☒ The proposed drawing correction filed on 16 September 2002 is a) ☐ approved or b) ☒ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10. ☒ Other: \_\_\_\_\_

**REMY YUCEL, PH.D****SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600**

## Continuation of 2. NOTE:

The proposed amendment to claim 100 would, if entered, result in the withdrawal of the rejection under 35 USC §102(e) as being anticipated by Chader et al, however it presents additional problems of new matter for the same reasons as set forth in the Action mailed 11 March 2002. With regard to the enablement rejection under 35 USC §112, 1<sup>st</sup> paragraph, Applicant's arguments are not persuasive. Applicant argues that the rejection is improper as it is a utility rejection. This is incorrect. The rejection is a proper enablement rejection as the specification does not teach how to use the claimed pharmaceutical compositions. Regarding the claimed animal cells, Applicant argues that the specification teaches enabled uses for them but does not point out where these teachings are to be found. Furthermore, the rejection presents a discussion of all eight Wands factors; Applicant's attention is particularly drawn to p. 11, second paragraph of the Action mailed 11 March 2002. With regard to the new matter rejection under 35 USC §112, 1<sup>st</sup> paragraph, Applicant's arguments are not persuasive. While the sequences are part of SEQ ID No. 1, there is no support for any of the specific fragment endpoints recited. With regard to the rejections under 35 USC §112, 2<sup>nd</sup> paragraph, Applicant's proposed amendment to claims 100, 112, 113, 135 and 135 would overcome the rejection if entered.

The proposed drawing corrections are not acceptable because Applicant has not submitted a marked-up version of Fig. 2B in which any changes have been marked.

The submitted computer readable format must be reviewed by STIC to determine if the application is in sequence compliance. This review is not yet available. Once available, this information will be conveyed to Applicant.

## Continuation of 3. Applicant's reply has overcome the following rejection(s):

Applicant's arguments regarding claims 126 and 127 are persuasive and these claims are therefore no longer rejected under 35 USC §112, 2nd paragraph as being indefinite. The rejection based on Ishii et al has been withdrawn in view of Applicant's now-executed declaration under 37 CFR 1.132 which removes the Ishii et al reference as prior art under 35 USC §102(a).